Nos. 52-54 and 220-222

In the Supreme Court of the United States

OCTOBER TERM, 1944

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

BRITISH ASSETS TRUST, LIMITED

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

SECOND BRITISH ASSETS TRUST, LIMITED

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

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v.

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SECOND BRITISH ASSETS TRUST, LIMITED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURTS OF APPEALS FOR THE FOURTH AND THIRD CIRCUITS

BRIEF FOR THE COMMISSIONER OF INTERNAL REVENUE

INDEX

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 52

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

No. 53

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

BRITISH ASSETS TRUST, LIMITED

No. 54

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

SECOND BRITISH ASSETS TRUST, LIMITED

No. 220

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

No. 221

BRITISH ASSETS TRUST, LIMITED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

No. 222

SECOND BRITISH ASSETS TRUST, LIMITED,
PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURTS OF APPEALS FOR THE FOURTH AND THIRD CIRCUITS

BRIEF FOR THE COMMISSIONER OF INTERNAL REVENUE

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 75–84)[1] is reported at 47 B. T. A. 474. The opinion of the Circuit Court of Appeals for the Fourth Circuit (R. 110–114) is reported at 139 F. 2d 419. The opinion of the Circuit Court of Appeals for the Third Circuit (Nos. 220–222, R. 16–21) is reported at 142 F. 2d 401.[2]

JURISDICTION

In Nos. 52–54 the judgments of the Circuit Court of Appeals for the Fourth Circuit were entered on November 9, 1943. (R. 114, 116–117, 118–119.) On February 5, 1944, the Chief Justice

[1] All record references are to the printed record in Nos. 52–54, unless otherwise indicated.

[2] The cases of the three taxpayers were consolidated in both Circuit Courts of Appeals for briefing, argument, and decision (R. 115, 118; Nos. 220–222, R. 14–15), and only one opinion was delivered by each court. Separate judgments were, however, entered in each case. The Board of Tax Appeals wrote only one opinion but rendered separate decisions with respect to each taxpayer.

signed an order extending the time within which a petition for certiorari might be filed for sixty days from February 8, 1944. (R. 119–120.) The petition for writs of certiorari was filed on April 8, 1944, and was granted on May 29, 1944. (R. 120–121.)

In Nos. 220–222 the judgments of the Circuit Court of Appeals for the Third Circuit were entered on April 6, 1944. (Nos. 220–222, R. 21–23.) The petition for writs of certiorari was filed on July 3, 1944, and was granted on October 9, 1944. (Nos. 220–222, R. 25–26.)

The jurisdiction of this Court is based upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The tax liability of the taxpayers, which are foreign investment trusts, depends upon whether they were "engaged in trade or business" or had "an office or place of business" within the United States during the years in question, so as to qualify as resident foreign corporations within Section 231 (b) of the Revenue Acts of 1936 and 1938 and the Internal Revenue Code, as interpreted by the applicable regulations. The question presented is whether the Board of Tax Appeals' undisputed finding of fact that the taxpayers maintained an office in the United States to perform certain routine functions, including the receipt of dividends and the keeping of records,

is sufficient to sustain its conclusion that the taxpayers were entitled to be classified as resident foreign corporations, or whether, as a matter of law, the taxpayers could satisfy the statutory requirement only by showing that they maintained an office here for the transaction of their regular business as foreign investment trusts.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set forth in the Appendix, pp 53–60.

STATEMENT

The taxpayers are corporations organized under the laws of Great Britain, with principal offices in Edinburgh, Scotland. Each taxpayer is an investment trust, engaged in the business of investing the funds of its security holders for the primary purpose of deriving income from investments. (R. 76.) The taxpayers' returns for the calendar years 1936 and 1937 were filed with the Collector of Internal Revenue for the District of Maryland. Their returns for the calendar years 1938 and 1939 were filed with the Collector of Internal Revenue at Newark, New Jersey. (R. 76.)

The Board of Tax Appeals held that the taxpayers had an office or place of business within the United States during the taxable years, and hence were entitled to be taxed as resident foreign corporations under Section 231 (b) of the Revenue

Acts of 1936 and 1938 and the Internal Revenue Code. (R. 84.) Under Section 1141 of the Internal Revenue Code, decisions of the Board of Tax Appeals may be reviewed by the Circuit Court of Appeals for the circuit in which is located the Collector's office where the tax return is filed. Pursuant thereto petitions for review of the Board's decisions with respect to the years 1936 and 1937 were addressed to the Circuit Court of Appeals for the Fourth Circuit, and petitions for review of the decision with respect to 1938 and 1939 were addressed to the Circuit Court of Appeals for the Third Circuit. On November 9, 1943, the Fourth Circuit affirmed the Board's decision relating to the years 1936 and 1937 (R. 110–114), but on April 6, 1944, the Third Circuit, holding that the taxpayers did not have an office or place of business within the United States during the years 1938 and 1939, reversed the decision of the Board with respect to such years. (Nos. 220–222, R. 16–21.) Although different taxable years were involved, the Board's findings of fact were identical, and the statutes and regulations construed were substantially the same in both cases. The decisions of the Third and Fourth Circuits thus created a conflict which was made the basis of the petition for certiorari in each case.

The facts found by the Board (R. 75–81) are substantially as follows:

Each taxpayer has invested large amounts in securities in the United States. On December 2, 1936, the taxpayers had the following amounts invested in United States securities (R. 76):

Scottish American Investment Co., Ltd. (hereinafter referred to as Scottish)	$24,452,752.79
British Assets Trust, Ltd. (hereinafter referred to as British)	14,974,359.67
Second British Assets Trust, Ltd. (hereinafter referred to as Second British)	8,457,000.00

The investment of British in United States securities represented over 30% of its total investments. The investment of Second British in the United States was in excess of 40% of its total investments. The relative investment of Scottish in the United States was proportionately larger than that of the other two taxpayers. During the taxable years each taxpayer owned a large number of different United States securities. (R. 76.)

Each taxpayer had a board of directors, which met frequently at its home office in Edinburgh. British and Second British were managed, as is customary for investment trusts in England and Scotland, by a firm of secretaries engaged in the business of management. (R. 76.)

For some years prior to 1936, Scottish had realized profits in the sale of securities in the United States, but had not filed federal income tax returns reporting the profit thereon. British companies, such as the taxpayers, are forbidden to pay dividends out of capital gains or to show such gains in their profit and loss accounts. The accounting firm of Barrow, Wade, Guthrie &

Company of New York City, of which Walter A. Cooper, a certified public accountant, was a partner, was engaged by Scottish to make a check or audit of its sales of securities and resulting profit over the period of years prior to 1936. As the result of this audit, taxes for the years 1927 to 1934, inclusive, in excess of $1,000,000, plus interest of $220,000, were paid by Scottish. (R. 76–77.)

In 1935, F. H. N. Walker, the manager of Scottish, was in the United States and discussed with Cooper the question of opening an office in the United States for Scottish. (R. 77.) During September and October, 1936, Cooper, together with Earl Breeding, an employee of Barrow, Wade, Guthrie & Company, made a trip to England and Scotland, where they visited a number of their firm's clients. They discussed with various officials of the taxpayers the question of opening an office for the taxpayers in the United States, including the ways in which a United States office might assist the taxpayers in business transactions, and the tax benefits of such an action under the Revenue Act of 1936. Cooper and Breeding left England in November, 1936, without any decision having been reached by the taxpayers as to whether they would open offices in the United States. (R. 77.)

On December 2, 1936, each taxpayer appointed Cooper its assistant secretary and, on the same day, cabled its decision to Cooper. British and

Second British wrote letters to Cooper dated December 2, 1936, informing him of his appointment and instructing him to proceed with the opening of an office in the United States. Scottish wrote Cooper a letter, dated December 3, similar to those sent him by the other taxpayers. (R. 77.)

Immediately upon receipt of the cables Cooper rented office space, consisting of two rooms on the twenty-sixth floor of the Equitable Building, at 120 Broadway, New York City, in which the firm of Barrow, Wade, Guthrie & Company maintained offices on the twenty-seventh floor. A lease was made on behalf of each taxpayer, and a designated part of the suite was leased to each taxpayer for a specified sum per year. This office had a telephone which was connected with the switchboard in the offices of Barrow, Wade, Guthrie & Company. The taxpayers' United States office was thus established, as the Board found, in order to enable the taxpayers to keep in closer touch with their large United States investments, to do themselves what had formerly been done for them by others, and to gain tax benefits. (R. 77.)

Both before and after the opening of their United States office, the securities of taxpayers were in the custody of J. P. Morgan & Company and the National City Bank. The securities were registered in the names of nominees. Prior to

December 2, 1936, the securities were registered in the names of the bank's regular nominees, each of whom received a single dividend check on behalf of a number of stockholders. During December, 1936, Cooper made arrangements with J. P. Morgan & Company and the National City Bank to designate for each taxpayer a new nominee in whose name were registered only securities of such taxpayer. By the end of December, 1936, the new nominees had filed dividend mandates with the corporations, the securities of which were held by the taxpayers, directing payment of dividends and the sending of annual reports, statements, and notices to the taxpayers at their United States office. (R. 77–78.)

During December, 1936, Cooper obtained assistance from Barrow, Wade, Guthrie & Company in establishing proper accounts for the taxpayers and in determining the methods of handling the taxpayers' affairs in the United States. The services of several employees of Barrow, Wade, Guthrie & Company were devoted to installation of a bookkeeping system and making current records in December, 1936. During that month, the records of each taxpayer were maintained on temporary sheets, copies of which were transmitted to the main offices in Edinburgh. The temporary records were later written up in final form. The records maintained by the United States office were the original records of the tax-

payers' transactions, receipts, and disbursements in the United States. All receipts of cash and all disbursements during December, 1936, were currently entered in the temporary record. Beginning in December, 1936, all expenses of each taxpayer in the United States were paid by the United States office. (R. 78.)

Throughout the taxable years Cooper rendered services as assistant secretary of each of the taxpayers. In addition to Cooper, two women were employed ~~full time~~ throughout the taxable years to render stenographic and clerical services. From February, 1938, through 1939, Henry A. Jeffers, an employee of Barrow, Wade, Guthrie & Company, supervised the activities of the office and spent a total of 1,038½ hours on the affairs of the taxpayers during that period. (R. 78.)

Beginning December, 1936, and continuing through 1939, the dividends on United States securities to which each taxpayer was entitled were collected by the United States office. (R. 78.) During December, 1936, some of the dividends were paid directly to J. P. Morgan & Company and the National City Bank because the dividends, while payable in the latter part of December, were payable ~~to~~ stockholders as of a record date prior to filing of mandates by the new nominees. By the end of December most of the dividends were being paid directly to the taxpayers' United States office. (R. 78.)

The taxpayers received the following amounts in dividends from United States securities (R. 79):

	1936	1937	1938	1939
Scottish	$985,912.76	$1,114,108.57	$730,621.45	$731,180.92
British	673,119.74	823,253.10	548,923.45	570,355.62
Second British	342,508.75	336,290.85	262,292.80	250,735.11

Interest on bonds owned by the taxpayers continued to be collected by the banks having custody of the securities. Checks for dividends collected by the taxpayers' United States office were endorsed and deposited by the office in the taxpayers' bank accounts in the United States. After establishment of the office in the United States in December, 1936, J. P. Morgan & Company did not send notices, annual reports, or proxies to Scottish or British. (R. 79.)

Cooper was authorized by each taxpayer to look after its interests in the United States. Specifically, he was authorized by each taxpayer, as a matter of regular routine, to attend to the following (R. 79):

(1) The collection of interest and dividends, and deposit of such income in the company's bank account.
(2) The payment of all local expenses.
(3) The maintenance of records of all United States transactions.
(4) The making of periodical reports (usually once a week) by cable and/or

letter on economic, political or other developments in the United States.

(5) The completion and filing of Federal income tax and capital stock tax returns.

Cooper was also specifically authorized by each taxpayer to draw on its bank account or accounts in the United States in amounts up to $5,000 in any one calendar month, and up to any amount upon the countersignature of a director. The authority of the assistant secretary of each taxpayer in the United States was as great as the authority of any director or officer at the main office. (R. 79.)

During the period in which the office of the taxpayers was maintained at 120 Broadway, New York, the taxpayers filed New York state franchise tax returns. Later, the taxpayers moved this office to New Jersey, where they qualified to do business under the laws of that state. The taxpayers' New Jersey office consisted of a large room with one corner partitioned off as a private office. There was an outside telephone in the office with a New Jersey number and a trunk line to the office of Barrow, Wade, Guthrie & Company. (R. 79.)

Each taxpayer maintained in its office in the United States a general ledger, a security ledger, a general journal, and a cash book. The general ledgers, security ledgers, and cash books were loose-leaf, while the general journals were bound

volumes. Each taxpayer also maintained here debit and credit vouchers in which all sales and purchases of securities and disbursements of every character were entered. The books and records kept for each taxpayer in the United States office constituted full and adequate records of the taxpayers' security transactions, receipt of income, and all disbursements in the United States. (R. 80.)

Copies of cash sheets and journal entries were furnished to the main office of each taxpayer monthly by the taxpayers' United States office. An annual statement was sent to the main office of each taxpayer at the end of December of each year by the United States office. Usually a statement of income and disbursements as of December 1 was sent to Edinburgh; the statement was brought up to date at the end of the year by cable so that the taxpayers might close out their accounts promptly. (R. 80.)

The United States office periodically sent to the taxpayers' home offices various reports concerning the investments in this country, such as annual reports of corporations in which the taxpayers had invested, and general financial developments in the United States, including statistical data issued by the Federal Reserve Bank and the New York Times. The United States office investigated reorganization plans of corporations in which the taxpayers owned securities, and made

recommendations to the taxpayers as to what action should be taken by them. (R. 80.)

At Cooper's suggestion each taxpayer in June, 1937, appointed Breeding as an additional assistant secretary. Breeding's appointment resulted from the illness of Cooper, who was ordered by his doctor to take a long vacation. Breeding's appointment provided for no additional salary. (R. 80.)

The taxpayers' assistant secretary in the United States had authority to direct nominees to sign proxies and to direct the disposition of stock rights and scrip. He exercised the latter responsibility without consulting the main offices of taxpayers. He had authority to authorize the delivery of specific certificates on sales of securities for each taxpayer and exercised such authority without consulting the main offices. (R. 80.)

The United States office prepared the United States tax returns of the taxpayers. (R. 80.)

The expenses of the taxpayers' United States office were paid out of the amounts received by Cooper for his salary. Cooper's salary from Scottish was paid directly by that company by check or draft. With respect to British and Second British, Cooper drew his own salary checks on the accounts of those taxpayers at the banks. Incidental expenses, such as stationery, office supplies, light, and telephone, were paid by checks drawn by Cooper on the taxpayers' accounts. The rent for office space was at first paid out of

Cooper's salary. Later, at Cooper's request, the taxpayers assumed the charges for rentals. The amount paid Cooper for salary was subject to adjustment from time to time, depending upon the amount of expenditures incurred in connection with his activities. Every partner of Barrow, Wade, Guthrie & Company who earned outside income was required by the partnership to turn over such income to the firm. (R. 80–81.) The New York office expenses for the taxpayers were as follows (R. 81):

	1936	1937	1938	1939
Scottish	$1,382.78	$7,456.86	$9,3[illegible].36	$7,728.39
British	1,310.07	6,918.76	6,0[illegible].72	6,193.82
Second British	500.26	2,853.42	2,7[illegible].78	2,533.71

Cooper left the firm of Barrow, Wade, Guthrie & Company on October 31, 1940. Shortly after that time he tendered his resignation as assistant secretary of the taxpayers, which was accepted by each taxpayer. (R. 81.)

In addition to the foregoing facts specifically found by the Board, the record discloses other uncontroverted evidence which is material to the question involved, and which, the Commissioner contended in the courts below, the Board erred in failing to find. (R. 87–88.) The additional facts, together with the record references at which they appear, are as follows:

1. Barrow, Wade, Guthrie & Company had about 100 foreign clients, of whom approximately

75 were investment trusts. (R. 20.) Mr. Cooper's association with the firm was as an expert accountant. (R. 29.) Prior to his employment by the taxpayers, he had not been connected with investment companies in an official capacity and had never served as investment counsel, although he had on occasion worked on valuation of securities. (R. 39.)

2. Both before and after the opening of the taxpayers' United States office in 1936, J. P. Morgan & Company was custodian for Scottish of the United States securities owned by it; National City Bank was custodian for Second British; and the securities of British were divided between the two custodian banks. (R. 13–14, 17, 18–19, 45.)

3. Prior to December, 1936, the charge made to Scottish for custodian and collection service by J. P. Morgan & Company was $\frac{1}{16}$ of 1% annually on the amount of securities handled, and $\frac{1}{4}$ of 1% on the amount of income collected. No change in charges was made after December, 1936, even though dividend income was collected thereafter by Cooper rather than by J. P. Morgan & Company. (R. 34–35, 40–41, 47–49.) In the case of British, the annual charge made by J. P. Morgan & Company for custodian services, including collection of income, consisted of a percentage of the amount of securities maintained in custody for the year, at a rate of $\frac{1}{10}$ of 1% on the first \$500,000, $\frac{3}{40}$ of 1% on the next \$500,000, and $\frac{1}{20}$ of 1% on all over \$1,000,000. No change was made

by J. P. Morgan & Company either prior or subsequent to December, 1936, in the basis or method of computing such charges. (R. 34–35, 47–49.) The National City Bank prior to December, 1936, charged both custodian and income collection fees. After December, 1936, it charged only a flat custodian fee. (R. 34–35.)

4. All of the financial and investment policies of the taxpayers were determined by their boards of directors at the main offices in Edinburgh. This included decisions as to what securities to buy and what to sell. (R. 31–32, 35–36, 37.)

5. During the taxable years each of the taxpayers made many purchases and sales of securities through brokers in the United States.[9] Orders for such transactions were effected directly between the main offices of the taxpayers or foreign brokers in Edinburgh and the United States brokers, the custodian banks delivering to the United States brokers the securities sold and accepting for custody any securities purchased. (R. 11, 17, 28, 43.) In some instances the custodian bank acted as broker. (R. 49.) The taxpayers did

[9] The taxpayers made sales of securities for total prices as follows (R. 67–74; Nos. 220–222, R. 1–13):

	1936	1937	1938	1939
Scottish	$2,747,281.08	$1,363,297.36	$1,366,120.13	$3,059,919.67
British	1,126,365.86	916,330.30	763,625.33	4,845,852.58
Second British	667,704.93	200,989.32	510,123.25	2,082,955.38

not carry any balances with the United States brokers, and the transfer of moneys or credit was handled directly between the banks and the brokers. (R. 28–30, 48–51.) Even after the taxpayers' New York office was opened in December, 1936, no change was made in the method of effecting purchases and sales of securities through brokers in this country. (R. 35.)

6. The taxpayers' New York office had nothing to do with purchases and sales of securities, with the exceptions that it recorded the changes in the securities account upon advice that purchases or sales had been made, and that where only a part of the stock of a certain corporation was sold, Cooper would advise the bank which particular certificates to deliver to the broker. (R. 7, 9–11, 13, 16–17, 19–20, 28, 42–43, 48–50, 55–56, 57–59, 59–61.) Checks for the purchase price of securities were not made out by the New York office and did not go through the office. (R. 17, 28–29.)

7. Practically all of the work performed by the New York office of the taxpayers consisted of receiving and recording the dividend checks, recording the securities owned and changes therein from time to time, and paying and recording the organization and administration expenses incidental to the office. (R. 36.)

SPECIFICATION OF ERRORS TO BE URGED IN NOS. 52–54

1. The Circuit Court of Appeals for the Fourth Circuit erred in holding that taxpayers had an

office or place of business within the United States during 1936 and 1937 within the meaning of the statute and the applicable regulations.

2. The Circuit Court of Appeals for the Fourth Circuit erred in affirming the decisions of the Board of Tax Appeals.

SUMMARY OF ARGUMENT

The question presented involves the meaning and application of Section 231 (b) of the Revenue Acts of 1936 and 1938 and the Internal Revenue Code, as interpreted by the applicable regulations, to uncontroverted facts. We believe that this issue was properly regarded by both courts below as one of law, as to which the principle of finality of decisions of the Board of Tax Appeals, established in *Dobson v. Commissioner*, 320 U. S. 489, rehearing denied, 321 U. S. 231, is inapplicable.

The taxpayers are not entitled to be classified as foreign corporations resident within the United States during the taxable years 1936 to 1939, inclusive, because the facts do not support the conclusion that they were engaged in trade or business, or had an office or place of business within the United States within the meaning of the applicable statutes and regulations.

The facts found by the Board, as well as the undisputed evidence adduced before it, disclose that the taxpayers managed their United States investments from their home offices in Scotland and that they negotiated all purchases and sales

directly with brokers in the United States. Banks in the United States had custody of all United States securities and collected the income on bonds owned by the taxpayers. The taxpayers' "office" consisted of leased space at which employees collected dividends on stocks, deposited them, kept records of all United States transactions, paid local expenses, prepared United States tax returns, transmitted information to the taxpayers' office in Edinburgh, and performed other chores which were merely incidental to their investment trust business.

The taxpayers' business was that of investing the funds of their security holders for the primary purpose of deriving income from investments. This business was managed by the taxpayers' directors in Scotland, and transactions effected through brokers in the United States without the intervention of an agent actually present in the United States; are required by statute to be treated as effected outside the United States. Consequently, the regular business of investing in securities was completely carried on outside the United States. The taxpayers can not be held to be engaged in business within the United States merely because dividends were collected, books kept, and other incidental functions were performed within the United States. The Treasury Regulations provide that the "office or place of business" within the United States required by the statute for classification of a foreign

corporation as a resident must be a place for the regular transaction of business and not one where only casual or incidental transactions might be or are effected. The regulation is not to be interpreted as requiring only an office where records are kept or an agent may be found or where any activities are carried on, without regard to their nature. The taxpayers' "office" in the United States was not a place intended to be used for the transaction of their regular business of making investments, either presently or potentially. Such business was conducted abroad in its entirety, and the local office was used solely for incidental transactions, such as collecting dividends, keeping books, and the like. That the transactions were numerous, involved large sums of money, and that the American office was vested with some discretion with respect to the affairs handled by it, is of no consequence, since the office was not used for the transaction of the regular investment trust business of the taxpayers.

ARGUMENT

THE TAXPAYERS WERE NOT ENTITLED TO BE CLASSIFIED AS RESIDENT FOREIGN CORPORATIONS DURING THE TAXABLE YEARS

Introduction. It seems clear that the question to be determined by this Court is one of law, involving the meaning and application of Section 231 (b) of the Revenue Acts of 1936 and 1938 and the Internal Revenue Code to undisputed facts,

and that the principle of finality of decisions of the Board of Tax Appeals (see *Dobson* v. *Commissioner*, 320 U. S. 489, rehearing denied, 321 U. S. 231) is inapplicable here. The issue tendered by the Government is whether an office maintained by foreign investment trusts, at which records were kept and dividend income was received but at which the regular investment business of the corporations was not transacted, is the type of office contemplated by the statutory provisions, as interpreted by the applicable regulations. There is no substantial controversy between the parties as to the subsidiary facts, i. e., what the activities of the taxpayers were. This was plainly an issue for determination by the Board of Tax Appeals as trier of the facts, and as to which the *Dobson* principle is clearly applicable. The dispute here is as to the legal significance of the undisputed facts, i. e., the scope of the statute—a question which we do not believe Congress intended to leave to final determination by the Board of Tax Appeals.

Appellate review of Board decisions was first provided for in Section 1003 (b) of the Revenue Act of 1926 (reenacted as Section 1141 (c) (1) of the Internal Revenue Code): "Upon such review, such courts shall have power to affirm or, if the decision of the Board is not in accordance with law, to modify or to reverse the decision

of the Board, with or without remanding the case for a rehearing, as justice may require." The legislative history of this provision shows that Congress plainly intended review to extend to questions such as that involved here. The committee reports expressly stated that the reviewing courts "may consider, for example, questions as to * * * the proper interpretation and application of the statute or any regulation having the force of law * * *." (H. Rep. No. 1, 69th Cong., 1st sess., pp. 19–20 (1939–1 Cum. Bull. (Part 2) 315, 328); S. Rep. No. 52, 69th Cong., 1st sess., p. 36 (1939–1 Cum. Bull. (Part 2) 332, 359)). Both of the courts below treated the question presented as one of law, as did the Circuit Court of Appeals for the Second Circuit in *Linen Thread Co.* v. *Commissioner*, 128 F. (2d) 166, certiorari denied, 317 U. S. 678.

Section 231 of the Revenue Act of 1936 (Appendix, *infra*), which applies to the years 1936 and 1937,[4] divided foreign corporations, for purposes of taxation, into non-resident and resident corporations. Non-resident foreign corporations were defined as those not engaged in trade or busi-

[4] The years 1938 and 1939 are governed by the corresponding provisions of the Revenue Act of 1938 and the Internal Revenue Code, respectively, which are printed in the Appendix, *infra*. These provisions are substantially the same as those in the Revenue Act of 1936, to be discussed, except that the rate of tax in the case of a resident foreign corporation in 1938 and 1939 was 19%.

ness and having no office or place of business within the United States. They were taxed on their *gross* income from sources within the United States (excluding capital gains) at a flat rate of 15%, except that in the case of dividends the rate was 10%. The amount of this tax was generally required to be withheld at the source. Section 144, Revenue Act of 1936.

Resident foreign corporations were defined as those engaged in trade or business or having an office or place of business within the United States. They were required to file returns by Section 235 of the Revenue Act of 1936, and were liable for tax at a rate of 22% upon "normal-tax net income" only, which was defined as the net income minus a credit for interest received upon obligations of the United States or of Government corporations and a dividends received credit of 85% of the dividends received from domestic corporations subject to tax. Sections 13, 26, and 231 (b) (Appendix, *infra*).

These provisions of the Revenue Act of 1936 constituted a new plan for taxing foreign corporations. Under the Revenue Act of 1934, c. 277, 48 Stat. 680, all foreign corporations were taxable like domestic corporations, and at the same rates, on their "net income," but only on net income, including capital gains, from sources within the United States. All foreign corporations were required to file returns in order to obtain the benefits of the deductions which the law allowed

them. But if a foreign corporation was not engaged in trade or business or had no office or place of business within the United States, a withholding tax of 13¾% was withheld at the source on certain types of income and the foreign corporation received credit for the amount withheld against its total income tax as computed on its return. See Sections 143, 144, and 231–236 of the Revenue Act of 1934.[5]

The committee reports with respect to the 1936 Act recognized that the tax on capital gains in the case of non-resident aliens and foreign corporations presented difficulties with respect to collection, and that the new surtax on undistributed profits was not well adapted to foreign corporations. The reports reflected the belief of Congress that the revised system in the 1936 Act would be "productive of substantial amounts of additional revenue, since it replaces a theoretical system impractical of administration in a great number of cases.[6] S. Rep. No. 2156, 74th Cong.,

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[5] The same method of taxing foreign corporations was employed in earlier Acts. See Sections 143, 144, 231–236 of the Revenue Act of 1932, c. 209, 47 Stat. 169; Sections 144, 145, 231–236 of the Revenue Act of 1928, c. 852, 45 Stat. 791; Sections 217, 233, 234 (b), 237, 239 of the Revenue Acts of 1926, c. 27, 44 Stat. 9, and 1924, c. 234, 43 Stat. 253; Sections 217, 232, 233, 234 (b), 237, 239 of the Revenue Act of 1921, c. 136, 42 Stat. 227.

[6] The advisability of exempting non-resident aliens and non-resident foreign corporations having investments in securities from the tax on capital gains and of substituting a withholding tax on dividends and interest, was indicated by a witness appearing before the Ways and Means Committee.

2d Sess., pp. 21 *et seq.* (1939–1 Cum. Bull. (Part 2) 678, 691–693; H. Rep. No. 2475, 74th Cong., 2d Sess., pp. 9 *et seq.* (1939–1 Cum. Bull. (Part 2) 667, 673–674).) The scheme of taxing foreign corporations inaugurated by the Revenue Act of 1936 was continued in the Revenue Act of 1938, c. 289, 52 Stat. 447, and the Internal Revenue Code. However, by Section 160 of the Revenue Act of 1942, c. 619, 56 Stat. 798, the definition of "resident" foreign corporations has been amended to exclude corporations having offices here but not actually engaged in trade or business within the United States.[7]

Classification of the taxpayers as resident foreign corporations would result in substantial tax

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Another witness presented similar arguments with respect to transactions on commodity exchanges. See Hearings Before the House Ways and Means Committee, 74th Cong., 2d Sess., on the Revenue Act of 1936, pp. 461–474, 369–379. From this it appeared that insofar as security and commodity transactions are concerned, the income tax in general, and particularly the tax on capital gains, was not being collected, that the tax on capital gains caused ill will, that foreign investors were withdrawing from United States markets as a result of the tax, and that elimination of the tax on capital gains would be compensated for by increased trading and investments in the United States, and hence greater revenue resulting from transfer taxes, larger incomes of United States brokers, and larger incomes subject to withholding tax from foreign investments. Text writers have also expressed similar opinions. Angell, The Nonresident Alien: A Problem in Federal Taxation of Income, 36 Col. L. Rev. 908 (1936); King, Collecting the Revenue—Current Developments, 14 The Tax Magazine 586, 589–590 (1936).

[7] The 1942 amendment was not made retroactive, and hence does not control the taxable years here involved.

savings. Since the tax of residents is computed upon "net" income from sources within the United States (rather than gross income, as in the case of a non-resident), the taxpayers, if classed as resident corporations, will be allowed to deduct all their expenses connected with income from sources within the United States. Section 232, Revenue Act of 1936 (Appendix, *infra*). These include the British taxes paid on United States income, other taxes, New York "office" expenses, custodian charges, commissions on sales of securities, and the proportionate part of interest and general and administrative expenses in the ratio that the gross income from sources within the United States bears to total gross income. The taxpayers will also be entitled to receive a credit against net income equal to 85% of the dividends received from domestic corporations.[8] The returns for 1936 and 1937, filed on the assumption that the taxpayers were resident corporations, show that the dividends received credit in each instance exceeded the net income. (Tr. 444–460, 461–477, 511–533, 534–548, 581–598, 599–609).[9]

[8] Section 26 (b) of the Revenue Act of 1938 contains a limitation that the dividends received credit shall not exceed 85% of the "adjusted net income." But the 1936 Act had no such limitation and allowed the 85% credit in full, even though, as here, the credit eliminated net income in each case in 1936 and 1937.

[9] The designation "Tr." refers to the typewritten original transcript of record in Nos. 52–54, forwarded to this Court by the Clerk of the Circuit Court of Appeals for the Fourth Circuit.

A. The taxpayers were not "engaged in trade or business" within the United States

As the first alternative permitting classification as a resident foreign corporation, Section 231 (b) prescribes that the foreign corporation must be engaged in trade or business within the United States. Although the taxpayers contended that they were engaged in business within the United States, neither of the lower courts nor the Board decided this question.[10] We submit, however, that the facts do not support the conclusion that the activities in the United States of the taxpayers constituted the doing of business.

The taxpayers' business, as found by the Board (R. 76), was that of "investing the funds of its security holders for the primary purpose of deriving income from investment." The term "investing" means, of course, the initial purchase of securities, the subsequent sale of securities which no longer produce sufficient income, and the reinvestment of the funds in other securities. The investment business was transacted at the taxpayers' home offices in Scotland, through their boards of directors. (R. 31–32, 35–36, 37.) The directors managed the taxpayers' affairs and determined their investment policies. They supervised investments in the United States (which were less

[10] The Board's opinion suggests, however, that in its view the taxpayers were probably engaged in business activities in this country. (R. 84.)

than half of each taxpayer's total investments (R. 76)), decided what purchases and sales of securities were to be made, and gave the orders therefor directly to brokers either in this country or abroad. Distribution of profits to taxpayers' stockholders was also decided upon and handled entirely by the home offices in Edinburgh. (R. 36.) The office of the taxpayers in the United States transacted no part of those affairs. In fact, when the office was opened, Scottish notified all its correspondents in New York as follows (R. 43–44):

> We shall be obliged if you will forward to Mr. Cooper copies of all Contract Notes, cash and delivery advices, and statements of account in connection with any transactions which we may have with you on or after today.
>
> We shall be glad if you will continue to send the principals of all such documents direct to us as heretofore. *All letters in connection with our investments should be sent here as previously, and all instructions regarding transactions will be sent from here.* [Italics added.]

In determining whether the taxpayers were engaged in business within the United States, all of these activities relating to the management of the business must necessarily be excluded from consideration inasmuch as they were carried on outside this country. And not only must the taxpayers' "business" status be decided solely on the basis of their activities within the United States,

but Section 211 (Appendix, *infra*) provides that the phrase "engaged in trade or business within the United States" does not include transactions in securities in the United States effected through resident brokers or custodians.[11] Brokers and custodian banks in the United States executed all purchases and sales of securities upon order from the taxpayers' home offices; they collected interest on bonds, and had custody of and control over the securities. These activities also, therefore, must be excluded from consideration under Section 211.

Only if the taxpayers' remaining activities in the United States, consisting of those performed at their New York office, constituted their trade or

[11] This provision was added by the Senate Finance Committee with the intent of clarifying the meaning of the phrase "engaged in trade or business within the United States" S. Rep. No. 2156, 74th Cong., 2d Sess., p. 22 (1939-1 Cum. Bull. (Part 2) 678, 692). The provision is in accord with the decisions. A foreign corporation buying and selling securities in the United States through banks and brokers, and not otherwise engaged in business here, was held not to be carrying on business in the United States within the meaning of the capital stock tax laws. *Union Internationale de Placements* v. *Hoey*, 96 F. 2d 591 (C. C. A. 2d). But where other extensive business activities, in addition to transactions through brokers, were engaged in in the United States, the corporation was held to be carrying on business. *Berliner Handels-Gesellschaft* v. *United States*, 30 F. Supp. 490 (C. Cls.), certiorari denied, 309 U. S. 670. Cf. *Bank of America* v. *Whitney Bank*, 261 U. S. 171, holding that a foreign corporation is not considered to be doing business in a state so as to be amenable to service of process, when it carries on its only transactions through correspondent or custodian banks.

business may taxpayers be classed as resident corporations. Those activities may fairly be summarized, we think, as the collection and deposit of dividends on stocks owned in United States corporations, the maintenance of full bookkeeping records regarding transactions in the United States, the transmission to the home office of corporate data and information regarding developments in the United States, the preparation of income tax returns, and the payment of local office expenses. The local office possessed no authority to select the depositary for the dividend checks, or to direct purchases or sales of securities. It did not have custody of the securities. It had no control over the income collected, except for the limited purpose of drawing upon it to pay local office expenses subject to a maximum limit, never approached (R. 38), of $60,000 per year which represented only a small part of the dividends received. It did not arrange for payment when a security was purchased, nor receive payment when one was sold. (R. 17, 28–29.) In fact, it did not know that a purchase or sale of a security had been made until it was advised by a local broker or bank, at which time it recorded the change in the security account. (R. 7, 17.) Cooper did have the authority to direct the taxpayers' nominees to sign proxies for stockholders' meetings of corporations in which the taxpayers owned stock, if nothing of importance was to be

voted on (R. 27, 42–43); to dispose of stock rights in the case of British or Second British (R. 28, 42, 65–66);[12] and where only part of the stock owned in a single corporation was sold, to advise the custodian bank which certificates to deliver to the broker.[13]

There can be no question, under cases involving the doing of business generally, that the taxpayers' activities within the United States, excluding those effected through brokers and custodian banks, did not constitute the doing of business.[14] The mere collection of income on invest-

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[12] The Board found (R. 80) that Cooper had authority to direct nominees to sign proxies and to direct the disposition of stock rights and scrip. But the record does not support this broad statement of authority. Cf. R. 55–56, 57–59, 59–61, in which Cooper's authority is specifically set forth. From this it appears that he was to represent each taxpayer at stockholders' meetings only on instructions from the home office.

[13] Since Cooper directed the preparation of the taxpayers' United States income tax returns, this authority was doubtless placed in his hands so that he might select the certificates representing stock having a cost basis most favorable to the taxpayers from a tax standpoint. (Cf. R. 36.) But the record discloses that on some occasions the taxpayers even instructed Cooper as to which particular shares of stock to deliver. (R. 66–67.)

[14] The limited authority given Cooper did not include the power to conduct an investment business. The right to direct that proxies be signed in cases where no business of importance was to be transacted, of course, was ministerial only and had no effect on the investments. The right to dispose of stock rights and to direct the delivery of a specific certificate of stock upon sale did not give him powers over purchases and sales generally. Nor did Cooper's practice of

ments, keeping of books, and preparation of tax returns, divorced entirely from the management of the property, have consistently been held not to constitute "engaging in business". Cf. *McCoach* v. *Minehill Railway Co.*, 228 U. S. 295; *United States* v. *Emery*, 237 U. S. 28; *Zonne* v. *Minneapolis Syndicate*, 220 U. S. 187; *Von Baumbach* v. *Sargent Land Co.*, 242 U. S. 503; *Higgins* v. *Commissioner*, 312 U. S. 212. And similar activities are not regarded as "carrying on or doing business" within the meaning of the capital stock tax laws. *Continental Baking Corp.* v. *Higgins*, 130 F. 2d 164 (C. C. A. 2d); *General Ribbon Mills* v. *Higgins*, 115 F. 2d 472 (C. C. A. 2d); *United States* v. *Three Forks Coal Co.*, 13 F. 2d 631 (C. C. A. 3d); *Rose* v. *Nunnally Inv. Co.*, 22 F. 2d 102 (C. C. A. 5th), certiorari denied, 276 U. S. 628; *Eaton* v. *Phoenix Securities Co.*, 22 F. 2d 497 (C. C. A. 2d); *Del Norte Co.* v. *Wilkinson*, 28 F. 2d 876 (E. D. Wis.). Compare *United States* v. *Peabody Co.*, 104 F. 2d 267 (C. C. A. 6th); *New Haven Securities Co.* v. *Bitgood*, 87 F. 2d 759 (C. C. A. 2d); *Brooklyn Trust Co.* v. *Commissioner*, 80 F. 2d 865 (C. C. A. 2d); *Ittleson* v. *Anderson*, 67 F. 2d 323 (C. C. A. 2d); *Stanley Securities Co.* v. *United States*, 38 F. 2d 907 (C. Cls.), certiorari denied, 282 U. S. 845.

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sending recommendations to the taxpayers' home offices regarding reorganizations give him any authority over investments, for the decisions with respect to the taxpayers' participation in reorganizations were made in Edinburgh.

Furthermore, insofar as the requirements for qualification as a resident foreign corporation are concerned, it is clear that by excluding transactions in stocks and securities effected through resident brokers or custodians from the definition of "business," Congress intended that a stricter rule apply in the case of an investment business. It is a reasonable inference that such a distinction was made in order to prevent a claim such as is made here, namely, that business activities are carried on in the United States, even though only mechanical, routine activiteis are performed here and all the essential matters involving exercise of judgment and discretion are conducted elsewhere.[15] Congress must be taken to have intended that the requisite "performance of personal services" in the United States, referred to in Section 211, should include the giving of instructions to the brokers, commission agents, and custodians by some resident of the United States. In the cases at bar all such instructions came from Scotland. If Congress believed it important to require that a resident place the orders, and made a distinction between giving the orders and executing the orders, it would seem that a similar distinction should be made between the giving of

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[15] A writer has expressed the opinion that Section 211 was obviously designed to attract business in securities to United States brokers and custodians without rendering the alien liable as a resident by such activities. 8 Mertens, Law of Federal Income Taxation (1942) 273, note 5.

the orders and the mere recording of the transactions.

Congress also provided in Section 211 that engaging in trade or business within the United States does not include even the giving of orders to buy and sell by a non-resident alien individual, resident in the United States for less than 90 days during the taxable year and receiving \$3,000[16] or less for his services. It would be incongruous that Congress should be willing to domesticate the purchases and sales of securities by a foreign corporation through resident brokers when, as here, it maintained no resident representative with authority to buy and sell, for any period of the year.

There is practical basis for our construction, for if the business were domesticated in the United States in the sense for which we contend, some of the taxpayers' responsible officers would be here, a substantial force of employees would be required, and the activities of the business would contribute to the production of the additional taxes which Congress anticipated from the new system inaugurated by the 1936 Act. The taxpayers owned nearly \$50,000,000 worth of United States securities at the end of 1936. Their business consisted of the supervision of such investments. That business was conducted from

[16] This amount is excluded from the taxable income of such non-resident alien by Section 119 (a) (3).

Scotland, and hence the expenses of the United States office amounted to only $3,292.11 for 1936; $17,229.04 for 1937; $18,251.86 for 1938; and $16,455.92 for 1939. (R. 81.) This scarcely supports the view that any substantial part of taxpayers' business was domesticated in the United States.

It is true that the taxpayers' office received the dividends on their securities, but this, too, was a purely mechanical operation involving no discretion or judgment and, despite its value and importance otherwise, was purely incidental to the ownership of the securities. The same is true of the other minor activities performed in the taxpayers' office; they do not take on added significance because the person in charge was given the title of assistant secretary. Whether business is actually carried on, within the meaning of the statute, does not turn on labels.

Accordingly, we submit that the taxpayers were not engaged in trade or business within the United States during the taxable years.

B. The taxpayers did not have "an office or place of business" within the United States

As the second alternative for classification as a resident foreign corporation, Section 231 (b) prescribes that the foreign corporation must have an office or place of business within the United States. Article 231-1 of Treasury Regulations 94 and 101 (and Section 19.231-1 of Regulations 103), pro-

vides that the term "office or place of business" implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are effected. This provision has been approved as a reasonable interpretation of the statute. *Linen Thread Co.* v. *Commissioner*, 128 F. 2d 166 (C. C. A. 2d), certiorari denied, 317 U. S. 673; *Aktiebolaget Separator* v. *Commissioner*, 45 B. T. A. 243, affirmed *per curiam*, 128 F. 2d 739 (C. C. A. 2d), certiorari denied, 317 U. S. 661. Furthermore, the statute was reenacted without change in the Revenue Act of 1938 and the Internal Revenue Code. Substantial weight is to be accorded this implicit legislative approval of the article, first promulgated in Treasury Regulations 94 under the Revenue Act of 1936. *Taft* v. *Commissioner*, 304 U. S. 351, 357; *Linen Thread Co.* v. *Commissioner*, supra.

Thus the statute, as interpreted by the regulations, requires that the office be a place intended for the transaction of the corporation's business in the United States, either presently or in the future. This construction is in accord with the accepted definitions of the word "office", which are intimately associated with the transaction of business. See also *Bradley* v. *Certigne Mining & Dredging Co.*, 93 Misc. (N. Y.) 519, 521, holding that the term "office" implies a place for the regular transaction of business. This construction is also required, we think, by the statutory

description of a resident corporation as one engaged in trade or business within the United States or having an office or place of business therein. It seems unlikely that Congress intended by such use of the word "office" to denote something other than a place of business. The words "place of business" are either descriptive of the word "office", to which they are conjoined, or the terms "office" and "place" as used in the statute are both qualified by "of business".

This does not mean, of course, that the term "office or place of business" is identical with engaging in business. If the office is a place intended to be used for the business purposes for which the corporation was organized, it would doubtless suffice under the statute, even though such activities were not immediately performed through the office. In short, the statute makes the status of a foreign corporation depend upon the purpose for which the office is established; if it was established to care for the corporation's regular or ordinary business, then the office suffices to domesticate the corporation. This was the construction given to the statute by the Board in the *Aktiebolaget* case, *supra*, p. 249, and by the Circuit Court of Appeals for the Second Circuit in the *Linen Thread* case, *supra*.

As a general proposition, a corporation may not do business in this country without having an office

here, and many corporations with offices here are actually doing business. But it does not follow that Section 231 should be construed to mean that any leased space will suffice as an office. Congress hardly intended that a foreign corporation could qualify as a resident here merely by renting a room in an office building and calling it an office.

In the court below the taxpayers contended that Section 231 is based upon considerations of collectibility and ease in administration of the tax, and that it should be interpreted in such a way as to permit classification as a resident if the foreign corporation has a properly authorized agent at a fixed place where adequate records of the corporation's American income may be found, irrespective of whether the office was intended for the transaction of business. But that conclusion is inconsistent with the statutory language which indicates strongly that the office must be related to the corporation's business. If Congress had wished to include as residents, corporations having agents and books here, even though no business were done or contemplated, it could easily have so provided in clear terms. But Congress did not use words expressing such a purpose, and we must "take the statute as we find it." *Anderson v. Wilson*, 289 U. S. 20, 27. Furthermore, since every office of a corporation does not keep books, Congress could not have achieved the purpose which the taxpayers ascribe to it merely by

requiring that an office be maintained here. The Government's construction of the statute would more closely effectuate the assumed purpose of Congress, for any office which actually transacted the United States business naturally would keep books. Accordingly, Congress seized upon the vital element when it identified the office as a place where the United States business was conducted.

In any event, the regulations have resolved these doubts by expressly requiring that the office be intended for the transaction of the regular corporate business, and the regulations being reasonable, should be controlling. There is nothing in the legislative history to show that Congress intended to classify as an office every place where records are kept and employees are found. Moreover, the mere presence of books and agents without more would not achieve the ease of administration and the additional revenue which the committee reports, *supra*, indicate that Congress expected to gain from the legislation.

Furthermore, by Section 160 of the Revenue Act of 1942, Congress eliminated the words "having an office or place of business therein" from the definition of a resident foreign corporation. H. Rep. No. 2333, 77th Cong., 2d Sess., p. 50, states, with reference to the reasons for the change:[17]

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[17] See also S. Rep. No. 1631, 77th Cong., 2d Sess., p. 135, as follows:

> A tendency has arisen, principally on the part of foreign corporations which are substantial holders of the

The income-tax status of nonresident aliens and foreign corporations engaged in trade or business in the United States or having an office or place of business here differs materially from that of other nonresident aliens and foreign corporations. In many cases the advantages are such that it is profitable to maintain an office in the United States, or the semblance of one, with no purpose of transacting any business in this country. Section 143 of the bill, therefore, amends several provisions of existing law to make the engaging in trade or business here the sole criterion.

Although this amendment was not made retroactive to earlier years, it indicates that Congress associated the term "office" with a purpose to transact business within the United States, es-

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stock of domestic corporations and, occasionally on the part of nonresident alien individuals, to attempt to establish that they have an "office or place of business" within the United States and hence secure the very different tax treatment accorded taxpayers within class (*b*). Since such corporations and individuals engage in no other economic activities in the United States, they cannot be said to be engaged in trade or business within the United States.

It appears to your committee to be in the interests of good administration to establish but one test (as is done with respect to capital-stock tax in section 1200 of the Code) in ascertaining the classification of foreign entities, namely, whether or not it is engaged in trade or business within the United States. Such amendment narrows sharply the field of uncertainty arising in such cases and removes a possible avenue of tax avoidance to large foreign corporate and other holders of domestic securities.

pecially in the case of corporations investing in securities.

We submit that the taxpayers' office was not established as a place for the regular transaction of their businesses, either presently or in the future. Quite clearly the office did not transact any of the investment business in the taxable years, as has already been shown, nor did the taxpayers attempt to show that the office was to be entrusted with the transaction of any part of the investment business in the future." On the contrary, it is clear from the evidence that the taxpayers never intended to transfer to their office in the United States either the determination of investment policies, the powers of management over United States securities, the power to decide upon and to order purchases and sales of securities, or the power to reinvest trust funds and control the income. These constituted the essential aspects of the taxpayers' regular and ordinary business. The duties which were delegated to the office in the United States, the collection of income, the keeping of books, and preparation of tax returns, were only incidental to the regular business of owning investments. The

The Board found that the taxpayers' purposes in opening an office in the United States were to gain certain tax advantages, to keep in closer touch with their United States investments, and to do for themselves what had formerly been done for them by custodian banks. (R. 77.) There is no finding that their purpose was to transact any part of their investment business within the United States.

taxpayers' United States office was, therefore, not "an office or place of business within the United States" within the meaning of the law and the regulations.

The Circuit Court of Appeals for the Third Circuit reached this conclusion with respect to the years 1938 and 1939. (Nos. 220-222, R. 19-21.) It held that, under the facts of record, the only regular business of the taxpayers was the investment business, consisting of the purchase and sale of securities with a view to disposing of unsatisfactory shares and reinvesting in others, and that this business was carried on exclusively at Edinburgh, Scotland, through the taxpayers' boards of directors. Since the local office established by the taxpayers handled only routine matters incidental to the investment business, it was held not to be an office for the transaction of the regular business of the corporations, and therefore not an office as defined in the statute and regulations. The fact that the incidental detail handled in the United States office was voluminous was held to be without significance.

The Circuit Court of Appeals for the Fourth Circuit, however, decided that taxpayers had an office or place of business within the United States in 1936 and 1937, on the ground that the office handled a large volume of transactions.[19] In

[19] It may be noted that the Board also relied heavily upon the volume of the transactions handled by the taxpayers' local office (R. 83.)

support of its conclusion, the court noted that Cooper's duties were varied and important; that he was vested with discretion in connection with them; and that the transactions passing through his office with regard to the investments were numerous and involved large sums of money. (R. 113.) Thus, the court did not attach any significance to the fact that the United States investments were not managed from that office, and indeed it declined even to inquire whether each activity of the New York office could be considered as only casual or incidental to the regular business of the corporation. We believe, therefore, that its decision is not in accordance with the statute as interpreted in the regulations.

If the Circuit Court of Appeals for the Fourth Circuit and the Board meant to interpret the regulation as requiring merely an office which would handle a large volume of transactions, we submit that they were clearly in error. The term "regular business" used in the regulation obviously refers to the ordinary business for which the corporation is organized. Although the term "casual" in the regulation might mean that a substantial volume of transactions is required, as distinguished from an occasional one, the term "incidental" can refer only to the quality or the nature, rather than the number and quantity, of the transactions. Its clear meaning is that activities which are merely incidents of the regular

business are not sufficient. Although a lack of volume of transactions, even though consisting of the regular corporate business, might prevent an alleged office from coming within the regulations, there is no basis for concluding that mere volume alone, unrelated to the regular business, would be sufficient.

The taxpayers contend that the collection of income was not an incidental activity but constituted their regular business. This contention was rejected by the decision below of the Circuit Court of Appeals for the Third Circuit and by the *Linen Thread* and *Aktiebolaget* cases.[20] Moreover, the Board's finding is that taxpayers' business was that of "investing" funds; there was no finding that the business was that of collecting income or keeping books. Although the purpose of the busi-

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[20] In the *Linen Thread* case the taxpayer was a manufacturer of thread with large and varied investments in securities in the United States. It established an office in the United States to collect and deposit the dividends and interest upon the investments, to file tax returns, to keep books, and to pay local expenses. The resident agent at the office also "looks after" the investments generally (p. 168) and kept the company informed of any developments in the United States which might affect its business. The Circuit Court of Appeals held that maintenance of an office which performed these activities but which was not used or kept for the transaction of the taxpayer's "ordinary" business was not an office within the meaning of the Regulations. *Aktiebolaget Separator* v. *Commissioner*, *supra*, involved similar facts. Cf. *Recherches Industrielles* v. *Commissioner*, 45 B. T. A. 253, appeal dismissed October 4, 1943 (C. C. A. 4th).

ness, as the Board found, was to derive income, the income was acquired as an incident of carrying on the investment business. In this respect an investment trust stands in no different position from any other company whose ultimate objective is earning and collecting profits. The nature of the business is determined by the activity or effort which produces the income, and profits are collected only after the business activities producing them have been completed.

Although the dividends received in the taxable years were large,[21] and the book entries numerous, they were the direct result of the fact that each taxpayer had large amounts invested in securities in the United States. The taxpayers' directors were required to supervise investments in excess of $25,000,000 for Scottish, $16,000,000 for British, and $8,000,000 for Second British, and, when necessary, to reinvest the amounts so that a satisfactory income was assured. Frequent sales were made and in fact the receipts from sales of securities in each year far exceeded in amount the dividends received. (Cf. notes 3 and 21, *supra.*) Business judgment and knowledge were employed

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[21] The taxpayers received dividends from domestic corporations as follows (R. 79):

	1936	1937	1938	1939
Scottish	$9[illegible],912.76	$1,114,108.97	$790,021.45	$731,[illegible].92
British	653,119.74	823,253.30	5[illegible],923.48	570,325.47
Second British	342,508.75	359,289.85	282,292.80	250,735.11

in handling the investments which were obviously lacking in the routine function of receiving dividend checks on existing investments. In these circumstances, it seems clear that the collection of dividend income was subordinate to and an incident of taxpayers' regular business of making investments. Even less would bookkeeping, preparation of tax returns, transmission of information and recommendations to the home office, payment of local expenses, and other minor activities performed at the United States office[22] constitute the transaction of the taxpayers' regular business.

It is manifest that the taxpayers' American office was maintained during the taxable years primarily in the belief that through it the taxpayers could obtain classification as residents and thus effect large savings in their United States tax liability.[23] No other purpose for establishing

[22] Practically all of the work performed by the office consisted of keeping records, receiving dividend checks, and paying expenses incidental to the office. (R. 36.)

[23] It is possible that there might have been no tax saving if large capital net gains on sales of securities had been realized in any year, as the Board stated. (R. 44.) But it is significant that none of the taxpayers had an excess of gains over losses in any of the years 1936–1939, inclusive, except that Scottish had a small net gain of $2,475.17 in 1937. (R. 67–74; Tr. 486–487, 502–503, 558, 573–574, 618, 630–631.) It is apparent, of course, that an investor owning large numbers of different securities can, in the normal course, neutralize the gain he may have on one sale by selecting another security which can be sold at a loss.

However, the tax saving as a resident, in the case of an investment company, results largely from the fact that ex-

the office is likely. The only saving effected in the charges of the custodian banks was the elimination of collection fees formerly paid National City Bank by British and Second British. (R. 34-35.) And this was doubtless more than balanced by the office expenses incurred. Nor did the taxpayers secure valuable investment counsel service through establishing their office, for Cooper had had no previous experience as an investment counsel. (R. 39.) While the tax saving motive might be unimportant if the United States investment business had in fact been conducted from the local office, that motive is pertinent when considered with the nature of the activities assigned to the office as showing that no real office for the transaction of business was intended in the establishment of the taxpayers' United States office.

It is also to be observed that the New York office performed no greater services than had formerly been done for taxpayers by the custodian banks. The banks had formerly collected income, had forwarded notices and reports from corporations, and rendered financial service, and these functions were merely transferred to the local office. (Cf. R. 45-47.) Even the mainte-

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penses may be deducted and that an 85% credit against net income for dividends received is allowed. The capital net gains would have to be large indeed in order to offset these advantages.

nance of records at the office seems to have added little. The banks of necessity had formerly sent statements to the taxpayers showing details of the income collected, purchases and sales of securities charged against the accounts, etc. The office set similar transactions up in bookkeeping form and sent duplicates of the entries to Edinburgh. However, the home offices could not use them in that form but were required to convert them into Sterling and "pick" them "up on their records." (R. 24.) The translation of the accounting records received from the New York office into usable form, therefore, apparently required substantial work on the part of the home office employees, as the conversion of detailed statements from the custodians had required formerly.

As has been shown, Congress provided in Section 211 that the phrase engaged "in trade or business within the United States"

> does not include the effecting of transactions in the United States in stocks, securities, or commodities through a resident broker, commission agent, or custodian.

It follows that the offices of the brokers or custodian banks could not constitute an office or place of business for taxpayers within the United States. And no different result is to be achieved merely by transferring certain ministerial duties from the custodian banks to an alleged office.

The fact that space is leased, which in its outward aspect resembles an office, having desks, employees, books, letterheads, and telephones, is not significant. The office in the statutory sense must be a place for the regular transaction of business. The inference is inescapable that the taxpayers went through the formalities of opening an office to obtain the tax advantage of classification as a resident; but that they did not intend to, and in fact did not, effect any real change in their activities within the United States.

It may be argued that if the taxpayers are not held to be resident foreign corporations, then no foreign investment company could qualify as such under the statute and regulations. But this by no means follows. *B. W. Jones Trust* v. *Commissioner*, 132 F. 2d 914 (C. C. A. 4th), is authority that where United States investments are managed from the United States office, i. e., where an investment business is carried on there, a foreign corporation may qualify as a resident.[24]

[24] In the *Jones Trust* case, the question was whether unincorporated foreign investment trusts had an office or place of business in the United States. The United States office was in charge of an American trustee who had custody of the United States securities and who had power to act for all the trustees. He and one English trustee held semiannual conferences at the office in the United States to decide what securities should be sold and what kept. All sales and purchases were made by the American trustee and collection of income was in his hands. The only activity performed

And it would indeed be discriminatory if, merely because they were investment companies, the taxpayers could qualify as residents by the simple expedient of maintaining an office which was not intended to be used for the transaction of their investment business, when other types of corporations having offices just as substantial and performing the identical functions as the taxpayers' offices are held not to qualify. *Linen Thread Co.* v. *Commissioner*, 128 F. 2d 166 (C. C. A. 2d), certiorari denied, 317 U. S. 673; *Aktiebolaget Separator* v. *Commissioner*, 45 B. T. A. 243, affirmed *per curiam*, 128 F. 2d 739 (C. C. A. 2d), certiorari denied, 317 U. S. 661.

Accordingly, it is submitted that the taxpayers maintained no place within this country which constituted an office within the meaning of Section 231 (b) of the Revenue Acts of 1936 and 1938, and of the Internal Revenue Code.

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in England by the English trustees was the distribution of the income. Upon these facts the court held that the local office was the place from which the regular business of the trusts in the United States, as distinguished from casual or incidental transactions, was managed and that it qualified as an office or place of business within the meaning of the statute. Cf. *Fajardo Sugar Co. of Porto Rico* v. *Commissioner*, 20 B. T. A. 980, holding that an office or place of business is maintained within the United States where it was shown that the corporation's board of directors met at the office; that the officers managed the affairs and determined the policies of the company from that office; and that its books and files were kept there.

CONCLUSION

Since the taxpayers were not engaged in trade or business and had no office or place of business within the United States, the Circuit Court of Appeals for the Fourth Circuit erroneously classified them as resident corporations during 1936 and 1937, and the Circuit Court of Appeals for the Third Circuit correctly decided that they were non-resident foreign corporations during 1938 and 1939. Consequently the judgments in Nos. 52–54 should be reversed, and the judgments in Nos. 220–222 should be affirmed.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.
SAMUEL O. CLARK, Jr.
Assistant Attorney General.
SEWALL KEY,
J. LOUIS MONARCH,
HELEN GOODNER,
Special Assistants to the Attorney General.

OCTOBER 1944.

APPENDIX

Revenue Act of 1936, c. 690, 49 Stat. 1648:

SEC. 13. NORMAL TAX ON CORPORATIONS.

(a) *Definition.*—As used in this title the term "normal-tax net income" means the net income minus the sum of—

(1) *Interest on obligations of the United States and its instrumentalities.*—The credit provided in section 26 (a).

(2) *Dividends received.*—The credit provided in section 26 (b). Such credit shall not be allowed in the case of a mutual investment company, as defined in section 48.

(3) *Dividends paid.*—In the case of a mutual investment company the credit provided in section 27, computed without the benefit of subsection (b) thereof (relating to dividend carry-over).

(b) *Imposition of Tax.*—There shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every corporation, a normal tax as follows:

* * * * *

SEC. 26. CREDITS OF CORPORATIONS.

In the case of a corporation the following credits shall be allowed to the extent provided in the various sections imposing tax—

(a) *Interest on Obligations of the United States and Its Instrumentalities.*—The amount received as interest upon obligations of the United States or of corporations organized under Act of Congress which is allowed to an individual as a credit for purposes of normal tax by section 25 (a) (1) or (2).

(b) *Dividends Received.*—85 per centum of the amount received as dividends from a domestic corporation which is subject to taxation under this title. The credit allowed by this subsection shall not be allowed in respect of dividends received from a corporation organized under the China Trade Act, 1922, or from a corporation which under section 251 is taxable only on its gross income from sources within the United States by reason of its receiving a large percentage of its gross income from sources within a possession of the United States.

* * * * *

SEC. 211. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

* * * * *

(b) *United States Business or Office.*— * * * As used in this section, section 119, section 143, section 144, and section 231, the phrase "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include the performance of personal services for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year and whose compensation for such services does not exceed in the aggregate $3,000. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities through

a resident broker, commission agent, or custodian.

* * * * *

SEC. 231. TAX ON FOREIGN CORPORATIONS.

(a) *Nonresident Corporations.*—There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 13 and 14, upon the amount received by every foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 15 per centum of such amount, except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country.

(b) *Resident Corporations.*—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a), but the normal tax imposed by section 13 shall be at the rate of 22 per centum instead of at the rates provided in such section.

(c) *Undistributed Profits Surtax.*—A foreign corporation shall not be subject to the surtax imposed by section 14.

(d) *Gross Income.*—In the case of a foreign corporation gross income includes only

the gross income from sources within the United States.

* * * * *

SEC. 232. DEDUCTIONS.

(a) *In General.*—In the case of a foreign corporation the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources within and without the United States shall be determined as provided in section 119, under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(b) *Charitable, and so forth, Contributions.*—The so-called "charitable contribution" deduction allowed by section 23 (q) shall be allowed whether or not connected with income from sources within the United States.

Revenue Act of 19[illegible], c. 289, 52 Stat. 447:

SEC. 13. TAX ON CORPORATIONS IN GENERAL.

(a) *Adjusted Net Income.*—For the purposes of this title the term "adjusted net income" means the net income minus the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations.

* * * * *

SEC. 14. TAX ON SPECIAL CLASSES OF CORPORATIONS. (a) *Special Class Net Income.*—For the purposes of this title the term "special class net income" means the adjusted net income minus the credit for dividends received provided in section 26 (b).

(b) There shall be levied, collected, and paid for each taxable year upon the special class net income of the following corporations (in lieu of the tax imposed by section 13) the tax hereinafter in this section specified.

* * * * *

(e) *Foreign Corporations.*—

(1) In the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein, the tax shall be an amount equal to 19 per centum of the special class net income, regardless of the amount thereof.

~~(2) In the case of a foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, the tax shall be as provided in section 231 (a).~~

* * * * *

SEC. 26. CREDITS OF CORPORATIONS.

In the case of a corporation the following credits shall be allowed to the extent provided in the various sections imposing tax—

(a) *Interest on Obligations of the United States and its Instrumentalities.*—The amount received as interest upon obligations of the United States or of corporations organized under Act of Congress which is allowed to an individual as a credit for purposes of normal tax by section 25 (a) (1) or (2).

(b) *Dividends Received.*—85 per centum of the amount received as dividends from a domestic corporation which is subject to taxation under this title, but not in excess of 85 per centum of the adjusted net in-

come. The credit allowed by this subsection shall not be allowed in respect of dividends received from a corporation organized under the China Trade Act, 1922, or from a corporation which under section 251 is taxable only on its gross income from sources within the United States by reason of its receiving a large percentage of its gross income from sources within a possession of the United States.

* * * * *

SEC. 231. TAX ON FOREIGN CORPORATIONS.
(a) *Nonresident Corporations.*—There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 13 and 14, upon the amount received by every foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income a tax of 15 per centum of such amount, except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country. For inclusion in computation of tax

of amount specified in shareholder's consent, see section 28.

(b) *Resident Corporations.*—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14 (e) (1).

(c) *Gross Income.*—In the case of a foreign corporation gross income includes only the gross income from sources within the United States.

* * * * *

Section 232 of the Revenue Act of 1938 is the same as Section 232 of the Revenue Act of 1936. The corresponding provisions of the Internal Revenue Code, applicable to the year 1939, are substantially the same.

Treasury Regulations 94, promulgated under the Revenue Act of 1936:

> ART. 231-1. *Taxation of foreign corporations.*—For the purposes of this article and articles 231-3, 232-1, 235-1, 235-2, and 236-1, foreign corporations are divided into two classes: (*a*) foreign corporations not engaged in trade or business within the United States and not having an office or place of business therein at any time within the taxable year, referred to in the regulations as nonresident foreign corporations (see article 1001-8); and (*b*) foreign corporations which at any time within the taxable year are engaged in trade or business within the United States or have an office or place of business therein, referred to in the regulations as resident foreign corporations (see article 1001-8).
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> * * * * *
>
> (b) *Resident foreign corporations.*—
>
> * * *

As used in section 231, section 119, section 143, section 144, and section 211, the phrase "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities (including hedging transactions) through a resident broker, commission agent, or custodian.

Whether a foreign corporation has an "office or place of business" within the United States depends upon the facts in a particular case. The term "office or place of business," however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected.

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Article 231–f of Treasury Regulations 101, promulgated under the Revenue Act of 1938 and Section 19.231–1 of Treasury Regulations 103, promulgated under the Internal Revenue Code for application to the year 1939, are substantially the same.

U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPREME COURT OF THE UNITED STATES.

Nos. 52-54 and 220-222.—October Term, 1944.

52 Commissioner of Internal Revenue, Petitioner, vs. The Scottish American Investment Company, Limited.	On Writs of Certiorari to the United States Circuit Courts of Appeal for the Fourth and Third Circuits.
53 Commissioner of Internal Revenue, Petitioner, vs. British Assets Trust, Limited.	
54 Commissioner of Internal Revenue, Petitioner, vs. Second British Assets Trust, Limited.	
220 The Scottish American Investment Company, Limited, Petitioner, vs. Commissioner of Internal Revenue.	
221 British Assets Trust, Limited, Petitioner, vs. Commissioner of Internal Revenue.	
222 Second British Assets Trust, Limited, Petitioner, vs. Commissioner of Internal Revenue.	

[December 4, 1944.]

Mr. Justice Murphy delivered the opinion of the Court.

We are confronted here with another aspect of the problem of the judicial reviewability of Tax Court determinations.

The three taxpayers involved in these cases are investment trusts organized under the laws of Great Britain, with principal offices in Edinburgh, Scotland. Each is engaged in the business of investing the funds of its security holders, for the primary purpose of deriving income from investments. The Tax Court, formerly known as the Board of Tax Appeals, has held that these

taxpayers had an "office or place of business" within the United States during the four years in question and hence were entitled to be taxed as resident foreign corporations under Section 231 (b) of the Revenue Acts of 1936 and 1938. 47 B. T. A. 474. Such a holding would result in substantial tax savings that would be unavailable to them had they not maintained such an office in this country. The tax returns for the various years having been filed in different collectors' offices, the Commissioner appealed to two Circuit Courts of Appeal.[1] The Circuit Court of Appeals for the Fourth Circuit, dealing with the 1936 and 1937 tax returns, affirmed the Tax Court's decision as to those years. 139 F. 2d 419. But the Circuit Court of Appeals for the Third Circuit, considering the identical facts and substantially the same statutes and regulations, held that the taxpayers did not have an office or place of business within the United States during 1938 and 1939; the decision of the Tax Court as to those years was accordingly reversed. 142 F. 2d 401. The irreconcilable conflict between the two courts below led us to grant certiorari.

The Tax Court made virtually undisputed findings of fact which need not be repeated here in detail. In brief, it was found that the three taxpayers jointly appointed a member of an American accounting firm as their assistant secretary. He was instructed to establish and maintain an office in the United States for them in order to obtain better representation of their interests in this country, large amounts of American securities being held as investments by them. By establishing this office they also sought to obtain certain tax advantages. The office was accordingly opened and two full time assistants to the assistant secretary were employed. The American securities were kept in the custody of two banks, through which the securities were bought and sold, and assistance on certain matters was obtained from the accounting firm. This office of the taxpayers kept full records concerning the American holdings, collected and received dividends on such holdings, acted on proxies and performed other duties relative to the maintenance of these investments. The assistant secretary made periodic financial, economic and political reports to the home

[1] The taxpayers' returns for 1936 and 1937 were filed with the Collector of Internal Revenue for the District of Maryland. The 1938 and 1939 returns were filed with the Collector of Internal Revenue at Newark, N. J. Under § 1141 of the Internal Revenue Code, decisions of the Tax Court may be reviewed by the Circuit Court of Appeals for the circuit in which is located the Collector's office where the tax return is filed.

offices, as well as specific reports concerning particular holdings. United States tax returns were prepared in this office and local expenses were disbursed therefrom. All decisions as to the buying and selling of securities and as to investment policies, however, were made by the home offices in Edinburgh.

Certain inferences and conclusions were then drawn from these facts by the Tax Court. It refused to consider each separate activity in this office apart from its integral relation to the entire investment trust business and was of the opinion that "an office handling affairs to this extent must be regarded as real and substantial. It was here that a very large part of the affairs of petitioners in this country were taken care of." The Tax Court further concluded that this office was not a sham but was a place for the necessary transaction of the American affairs of the taxpayers; "the office was used for the regular transaction of business and not as a place where casual or incidental transactions might be, or were, effected."

Utilizing the provisions of Section 231(b) and of the regulations promulgated thereunder,[2] the Tax Court reached the ultimate conclusion that the taxpayers maintained an office or place of business within the United States and were therefore entitled to be taxed as resident foreign corporations. There is no charge here that the Tax Court failed to follow the applicable statutes or regulations. No clear cut mistake of law is alleged. Nor are any constitutional issues involved. The sole issue revolves about the propriety of the inferences and conclusions drawn

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[2] Section 231(b) of both the Revenue Acts of 1936 and 1938 provides for taxes on resident foreign corporations, defining them as "a foreign corporation engaged in trade or business within the United States or having an office or place of business therein." Revenue Act of 1936, c. 690, 49 Stat. 1648, 1717; Revenue Act of 1938, c. 289, 52 Stat. 447, 520. The Tax Court and the two courts below did not pass upon the Commissioner's contention, renewed before us, that the taxpayers were not "engaged in trade or business" within the meaning of this section. We likewise do not discuss that claim here since it is sufficient if it be found that the taxpayers in this case had "an office or place of business" in this country. See B. W. Jones Trust v. Commissioner, 132 F. 2d 914, 917.

Art. 231.1 of Treasury Regulations 94, promulgated under the Revenue Act of 1936, provides in part: "Whether a foreign corporation has an 'office or place of business' within the United States depends upon the facts in a particular case. The term 'office or place of business,' however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected." Art. 231.1 of Treasury Regulations 101, promulgated under the Revenue Act of 1938, and Section 19.231.1 of Treasury Regulations 103, applying to the year 1939, are substantially the same.

from the evidence by the Tax Court. The taxpayers claim that these determinations are supported by substantial evidence and hence were not reversible by an appellate court. The Commissioner charges that the facts demonstrate that the American office was not intended to be used for the transaction of the regular business of making investments and that it was improper as a matter of law to classify the taxpayers as resident foreign corporations.

The answer is to be found in a proper realization of the distinctive functions of the Tax Court and the Circuit Courts of Appeal in this respect. The Tax Court has the primary function of finding the facts in tax disputes, weighing the evidence, and choosing from among conflicting factual inferences and conclusions those which it considers most reasonable. The Circuit Courts of Appeal have no power to change or add to those findings of fact or to reweigh the evidence. And when the Tax Court's factual inferences and conclusions are determinative of compliance with statutory requirements, the appellate courts are limited to a determination of whether they have any substantial basis in the evidence. The judicial eye must not in the first instance rove about searching for evidence to support other conflicting inferences and conclusions which the judges or the litigants may consider more reasonable or desirable. It must be cast directly and primarily upon the evidence in support of those made by the Tax Court. If a substantial basis is lacking the appellate court may then indulge in making its own inferences and conclusions or it may remand the case to the Tax Court for further appropriate proceedings. But if such a basis is present the process of judicial review is at an end. *Helvering v. National Grocery Co.*, 304 U. S. 282, 294; *Wilmington Trust Co. v. Helvering*, 316 U. S. 164, 168; *Commissioner v. Heininger*, 320 U. S. 467, 475; *Dobson v. Commissioner*, 320 U. S. 489.

Our examination of the record convinces us that the factual inferences and conclusions of the Tax Court are supported by substantial evidence. While decisions as to the purchase and sale of American securities were made in the Edinburgh offices, there was abundant evidence that the American office performed vital functions in the taxpayers' investment trust business. The uncontradicted evidence showed that this office collected dividends from the vast holdings of American securities and did countless other tasks essential to the proper maintenance of a large invest-

ment portfolio. Although some matters pertaining to the American business were taken care of by others, this office performed a very substantial part of these duties and could be held to have satisfied the statutory requirements. We cannot say that it was unreasonable for the Tax Court to conclude that this office was more than a sham and that it was used for the regular transaction of business. Hence it was proper as a matter of law for the Tax Court to classify the taxpayers as resident foreign corporations under Section 231 (b). We do not decide or ~~infer~~ imply that the contrary inferences and conclusions urged by the Commissioner are entirely unreasonable or completely unsupported by any probative evidence. We merely hold that such contentions are irrelevant so long as there is adequate support in the evidence for what the Tax Court has inferred. It follows that the Tax Court's conclusions in this case cannot be set aside on appellate review.

Moreover, this case exemplifies one type of factual dispute where judicial abstinence should be pronounced. The decision as to the facts in this case, like analogous ones that preceded it,[3] is of little value as precedent. The factual pattern is too decisive and too varied from case to case to warrant a great expenditure of appellate court energy on unravelling conflicting factual inferences. The skilled judgment of the Tax Court, which is the basic fact-finding and inference-making body, should thus be given wide range in such proceedings.

The judgment of the Circuit Court of Appeals for the Fourth Circuit is affirmed. The judgment of the Circuit Court of Appeals for the Third Circuit is reversed.

[3] See Linen Thread Co. v. Commissioner, 128 F. 2d 166; Aktiebolaget Separator v. Commissioner, 45 B. T. A. 243, affirmed in 128 F. 2d 739; R. W. Jones Trust v. Commissioner, 132 F. 2d 914; Fajardo Sugar Co. of Porto Rico v. Commissioner, 20 B. T. A. 980; Recherches Industrielles v. Commissioner, 45 B. T. A. 273.